

## **GRADUATE TRAINEE ADVERSE ACTION PROCESS**

**(attachment to contract issued to graduate trainees)**

1. "Adverse action" includes any of the following actions by the Hospital/training program: revocation of a right or a privilege; suspension of a right or privilege; censure; written reprimand; imposition of a fine; required performance of public service or of a course of education, counseling or monitoring arising out of the filing of a complaint or a formal charge reflecting on the graduate trainee's competence to practice medicine.

The following actions are also included, only if related to the graduate trainee's competence to practice medicine or to a complaint or allegation regarding any violation of law, regulation or bylaw: restriction or non-renewal of a right or a privilege, denial of a right or privilege, resignation, leave of absence, withdrawal of an application or termination or non-renewal of a contract.

2. Adverse action may be taken for due cause which shall include, but is not limited to, any of the following reasons:

- (a) professional incompetence, or conduct that might be inconsistent with or harmful to good patient care or safety, lower than the standards of the Medical/Professional Staff, or disruptive to Hospital operations;
- (b) conduct which calls into question the integrity, ethics or judgment of the graduate trainee, or which could prove detrimental to the Hospital's patients, employees or operations;
- (c) violation of the bylaws or policies and procedures of the Professional/Medical Staff, the Hospital or Harvard Medical School;
- (d) misconduct in science; and
- (e) failure to perform duties.

### **3. Allegations of Misconduct in Science**

Any allegation of misconduct in science pertaining to a graduate trainee shall not be governed by the procedures described here, but shall be addressed and resolved pursuant to the process set forth in the Bylaws of the Medical/Professional Staff and/or applicable policies.

### **4. Initiation of Adverse Action**

The adverse action process may be instituted by the relevant Department Chair/Service Chief. The Department Chair/Service Chief shall give written notice of the action or proposed action and the reason for it to the affected graduate trainee. The graduate trainee shall also be notified of his/her right to a hearing as described below, in the event the Department Chair/Service Chief recommends one or more of the following adverse actions: revocation or suspension of a right or privilege, or, if related to professional competence or a complaint or allegation regarding a law, regulation or bylaw, the restriction, reduction, or non-renewal of a right or privilege.

In the event that the adverse action is one which does not entitle the graduate trainee to a hearing, the action of the Department Chair/Service Chief shall be the final decision of the Hospital/training program in the matter.

#### 5. Hearing Procedure

(a) In the event that the proposed adverse action is one which entitles the graduate trainee to a hearing, the graduate trainee shall also be advised of his/her right to appear with counsel and to introduce witnesses or evidence, subject to the limitations set forth in section (d) below. The graduate trainee shall have thirty days after such notice to request a hearing. Failure to do so shall constitute a waiver. In the event that the graduate trainee does not make a timely request for a hearing, the action of the Department Chair/Service Chief shall be the final decision of the Hospital/training program in the matter.

(b) If the graduate trainee requests a hearing, the Director of Graduate Medical Education shall appoint a hearing committee which shall consist of not less than three persons. One member shall be a graduate trainee. No person who has actively participated in the initiation of the adverse action or proposed action shall be appointed to the hearing committee.

(c) The Department Chair/Service Chief whose adverse action or proposed action occasioned the hearing or his/her designee shall have the initial obligation to present evidence in support of the action or proposed action. Thereafter, the graduate trainee requesting the hearing shall have the burden of providing by clear and convincing evidence that the action or proposed action was arbitrary or capricious, or unsupported by substantial evidence.

(d) The hearing need not be conducted strictly according to rules of law relating to the examination of witnesses or the presentation of evidence. The hearing committee shall consider such evidence as reasonable persons are accustomed to rely on in the conduct of serious affairs. The hearing committee may take notice of any general, technical, medical or scientific fact within the specialized knowledge of the committee, and shall decide all other procedural matters not specified in this policy. The graduate trainee may not retry, and the hearing committee and the Hospital/training program may rely on and accept as true, any finding of fact contained in a final decision by the applicable licensing, certifying or regulatory authority, or by Harvard Medical School in any investigation it conducts, provided the graduate trainee was a party to the proceeding in which the finding of fact was made.

(e) The hearing committee shall issue a written report of its findings of fact and recommendations concerning what adverse action(s), if any, should be taken by the Hospital. A copy shall be sent to the affected graduate trainee, the Director of Graduate Medical Education, the Chief Medical Officer and the relevant Department Chair/Service Chief.

#### 6. Appellate Review

The graduate trainee or the Department Chair/Service Chief may request that the Board of Trustees conduct an appellate review of the matter, or the Board may conduct a review on its own initiative. The Board may provide for such review by a Board committee ap-

pointed for the purpose. If neither the graduate trainee nor the Department Chair/Service Chief request appellate review, and the Board does not decide to conduct such review on its own initiative, the decision of the hearing committee shall be the final decision of the Hospital/training program in the matter.

The proceedings of the Board of Trustees or Board appellate review committee shall be based on the record of the hearing, the report of the hearing committee and any written response which the affected graduate trainee and the relevant Department Chair/Service Chief wish to make. At the sole discretion of the Board of Trustees or Board appellate review committee, it may also consider new or additional information. If it does so, it shall share this information with the affected graduate trainee, the Department Chair/Service Chief and the hearing committee and give them the opportunity to respond.

The Board of Trustees or Board appellate review committee shall issue its decision in writing. A copy shall be sent to the affected graduate trainee, the Director of Graduate Medical Education, the Chief Medical Officer and the relevant Department Chair/Service Chief(s). It shall be the final decision of the Hospital in the matter.

#### 7. Summary Adverse Action

The relevant Department Chair/Service Chief or his/her designee with the concurrence of the Chief Medical Officer, if available, may make an immediate summary suspension or take other immediate summary adverse action whenever such action is deemed necessary to maintain acceptable standards of care, safety, operation, integrity or ethics at the Hospital/training program. The person effecting such adverse summary action shall send a written report of such action and the reason(s) thereof to the graduate trainee involved, the Director of Graduate Medical Education and the Chief Medical Officer within three days of taking action. The graduate trainee may request review of this action within thirty days.

Upon such request the Director of Graduate Medical Education shall appoint a committee to review the summary suspension or other action. Within fourteen days of the graduate trainee's request, the committee shall decide whether the action appears to be substantiated by fact and is reasonable and should be continued in force, or whether it should be lifted. The committee shall send prompt written notice of its decision to the graduate trainee involved, the relevant Department Chair/Service Chief, the Director of Graduate Medical Education and the Chief Medical Officer.